

**Minutes  
of the  
Third Meeting  
of the  
Funding Formula Study Task Force  
Silver City, New Mexico  
September 12-13, 2005**

The third meeting of the funding formula study task force was called to order on September 12, 2005 by Representative Mimi Stewart, co-chairwoman, at 10:15 a.m. in the global resource center, western New Mexico university, Silver City, New Mexico.

***Present were:***

Rep. Mimi Stewart, co-chairwoman  
Mr. Dick Pool, co-chairman  
Mr. Robert Archuleta  
Sen. Vernon D. Asbill  
Dr. V. Sue Cleveland  
Mr. Jack Jenkins  
Mr. Randy Manning  
Sen. Cynthia Nava (September 12)  
Ms. Lilliemae Ortiz  
Mr. Dennis Roch  
Sen. James G. Taylor

***Absent were:***

Rep. Roberto "Bobby" J. Gonzales  
Rep. Brian K. Moore  
Ms. Karen White

***Advisory Members:***

Rep. William "Ed" Boykin  
Rep. Jimmie C. Hall  
Rep. Rick Miera  
Mr. Manuel F. Valdez

Sen. Ben D. Altamirano  
Rep. Gail C. Beam  
Sen. Mark Boitano  
Sen. Pete Campos  
Rep. Joni M. Gutierrez  
Sen. Gay G. Kernan  
Sen. Linda M. Lopez  
Rep. Terry T. Marquardt  
Sen. Mary Kay Papen  
Mr. James M. Phipps  
Sen. Bernadette M. Sanchez  
Rep. Richard D. Vigil

(Attendance dates are noted for those members not present for the entire meeting.)

***Staff:*** Jonelle Maison, Sharon Ball, Jeremy LaFaver, Frances Maestas, Kathy Forrer, Pam Bowker, Scott Hughes

***Guests:*** The guest list is in the meeting file.

Copies of written presentations and handouts are in the meeting file.

Minutes of the second meeting were approved as submitted.

Dr. John Counts, president of western New Mexico university, welcomed the committee to the campus. He highlighted several of the university's accomplishments and recent awards.

***1995-1996 Public School Funding Formula Task Force, Review of Process and Final Report — James "Bud" Mulcock, Paula Tackett, Kathleen Forrer***

Mr. Mulcock explained that the last task force was undertaken as a result of a pending lawsuit challenging the New Mexico funding formula, in particular the density factor and the training and experience (T&E) waiver. As implemented, the density factor penalized several mid-size school districts that were falling behind in the allocation of program units. There had been earlier attempts to fix the density factor, but the legislature had been unable to pass legislation. The 10 school districts that sued the state were Alamogordo, Artesia, Aztec, Bloomfield, Deming, Farmington, Gadsden, Hobbs, Lovington and Portales. The district court judge who dismissed the lawsuit on the basis that the school districts did not have standing to bring suit noted that the issue was a political matter that should be addressed by the legislature.

Ms. Tackett described the process that brought about the task force in 1995-1996. In 1995, House Bill 927 passed and directed LESC to contract for a comprehensive evaluation of the public school funding formula. The bill authorized the legislative council to appoint an advisory committee to assist LESC in developing an RFP and in selecting an independent contractor; LESC and LFC were to provide informational and technical assistance to the contractor. The bill was vetoed by Governor Johnson.

Despite the veto, then-Speaker Raymond Sanchez called together the senate president pro tempore, the governor's office and the president of the state board of education to establish a funding formula task force, to which they allocated \$50,000 for the initiative. They decided on a 13-member task force: six legislators and seven public members, including one representative of the governor's office; one representative of the state board; three superintendents appointed by the speaker, president pro tempore and governor from a small, medium and large district; and two members of the public. In addition to the formal voting members of the task force, a number of advisory members and task force liaisons were appointed. Ms. Tackett noted that the makeup of the 1995-1996 task force was similar to the makeup of the current task force. The task force was staffed by the three permanent legislative committees, the governor's office, DFA and SDE. LESC and the state board were directed to hold public hearings to take input from the public to assist in identifying a variety of issues regarding the funding formula, and SDE provided the baseline data that would be given to the contractor.

The 1995-1996 study was conducted in two separate phases: the first phase focused on selecting a consultant to conduct the study; and the second phase was the actual study itself. Ms. Tackett noted that, like now, the 1995-1996 task force met several times in the first interim to frame the parameters of the public school funding formula study. The task force developed a

work plan, a proposed area of study and a time frame for completion of the study. The task force used New Mexico's basic public education policy, set forth in the constitution, statutes and state board rules, to help guide the work of the task force. The policy directs New Mexico schools to provide a uniform system of public education offering "equal access to educational opportunity", and guarantees all New Mexico public school students "access to programs and services appropriate to their educational needs regardless of local geographic or economic conditions and supports the concept of local school district autonomy."

The task force outlined the scope of study to include reviewing the existing funding formula and the rationale behind each of its amendments based on available data, the basic concepts underlying the formula and the basic components of the formula to determine:

- (1) if the formula provided an equitable distribution of funds;
- (2) if equity was supported by the existing statutes as written and implemented;
- (3) if adequate financial auditing, accounting system and program review safeguards were in place to ensure equitable distributions;
- (4) if there was a basic level of financial support in all districts as required by law;
- (5) if the current system allowed districts to provide for minimum or basic program requirements, electives and other enhancements; and
- (6) how the funding mechanism compared in terms of equity with the funding mechanism of other states.

Additionally, the scope called for (1) the identification and collection of data necessary to assess equity issues, including data necessary to determine the relationship between formula distributions and program expenditures; and (2) the development of criteria and a process the state could use to evaluate proposed changes in the future, including identifying the pertinent data necessary to review changes. An RFP was developed and, after review of proposals and interviews, Forbis Jordan and Associates was awarded the contract in early 1996. In February of 1996 the pending lawsuit regarding the funding formula was dismissed. At the same time, the task force established a technical advisory panel to review the consultant's work and provide advice throughout the study.

The contractor began working on the formula study in the early spring of 1996. With the advisory panel assisting Mr. Jordan, the first report to the task force was given in the summer of 1996. Throughout the summer, the Jordan group reviewed data relating to its formula equity analysis; identified areas of unfairness within the formula; proposed adding alternative factors in the formula; and reviewed a number of non-formula education finance issues such as funding accountability, capital outlay funding and rewards for schools with high performance.

The Jordan group submitted its final report and summarized its findings by identifying a series of tasks: review a variety of historical documents; conduct a series of interviews with state and local stakeholders; conduct an analysis of formula and non-formula provisions; conduct a RIM cost study; review and recommend revision of program unit cost indices; assess fiscal and program accountability procedures; and select funding alternatives. Upon receipt of the final report, the task force conducted extensive public hearings to review the proposed recommendations and to invite public testimony regarding the proposed changes to the funding formula. After the completion of many of these discussions, the task force adopted the majority of the consultant's recommendations and developed legislation to implement these recommendations.

Ms. Tackett pointed out that one of the tasks for the current task force is to determine the cost of a funding formula study so that legislation may be introduced during the next session to fund it.

Dr. Forrer presented the technical findings of the 1996 study, the principal finding of which was that by every measure, the New Mexico funding formula is highly equitable. New Mexico is a high effort-low ability state in support of elementary and secondary education, which means the per capita effort is high, but the dollars generated by that effort are less than many other states. To determine the fairness of the formula, the study looked at the validity of its indices; the sufficiency of its funding level; and the extent to which program approval and monitoring ensure delivery of appropriate educational programs. The study was divided into seven tasks: (1) review and analysis of historical documents; (2) interviews and surveys; (3) analysis of the current formula and non-formula funding provisions; (4) RIM cost study; (5) design and calculation of indices; (6) analysis of fiscal and program accountability procedures; and (7) selection and evaluation of funding alternatives.

The study concluded that the density factor should be eliminated in favor of an at-risk index, T&E waivers should be phased out and special education factors should be revised. The recommendation for an education overburden index was not adopted. The task force supported four bills in the 1997 legislature; the major bill enacted the adopted recommendations and appropriated \$65 million for the save harmless on the density factor elimination. The other bill that passed appropriated \$375,000 for the department's accountability project.

As enacted in 1997, the at-risk index contained four factors: (1) mobility rate; (2) limited English proficiency; (3) poverty; and (4) high school dropout rate. The fourth factor was eliminated when the index was revised later. Although once calculated using a cluster model, each district now calculates its own at-risk index.

Representative Miera asked about the cost of the current study. Ms. Tackett said she was reluctant to give a specific amount until staff could finish its research into the cost of similar studies in other states. Mr. Mulcock noted that other states, such as Arkansas and Kentucky, are conducting similar studies and they are running between \$750,000 to \$1,000,000. Discussing whether the current study would look toward the future enough, particularly in light of No Child

Left Behind (NCLB) and the loss of federal revenues for not meeting adequate yearly progress (AYP), Representative Miera recommended that the task force look at where the state wants to be instead of where it is at. In response, Mr. Mulcock said there had been a leadership decision prior to the last study to look only at equity, not adequacy, but the legislation that created this task force requires adequacy to be addressed. Committee discussion ensued over possible sources of revenue for the task force and the upcoming study.

Representative Stewart remarked on the use of a technical assistance panel to vet the contractor's work, which she thought would be useful for this study. Upon further questions from Representative Stewart, Dr. Forrer said the task force determined the \$65 million cost for at-risk, special education and hold harmless after a cost analysis. In addition, \$20 million was provided for teacher salaries, but that appropriation was vetoed. Asked about the time line for the last study, Ms. Tackett said that the task force was constituted in June 1995 and it met about every three weeks. LESC and SDE did the necessary research and the RFP went out in December 1995. Jordan and associates was selected in March 1996 and the final report was given to the committee in October or November of 1996, after public hearings were held around the state in September. Ms. Tackett reminded the task force that the last study was very focused on equity, which is not the case in this study. This time, it will take longer to identify formula issues.

Concerned about the time line for the current study, Mr. Jenkins discussed expediting the process. Representative Stewart and Ms. Tackett indicated that the scope of this study will require more time than the previous study. Senator Asbill expressed concerns about out-of-state groups making recommendations or making decisions for the task force. He stressed the importance of involving the education-related professional associations in the state, including those for school boards, school administrators and school business officials.

Ú Mr. Jenkins asked for a compilation of comments and recommendations outside meeting minutes.

Mr. Roch initiated a discussion of the motivations behind the current funding formula study. Mr. Mulcock said there was general consensus that it was time for a comprehensive look at the formula. Dr. Cleveland noted that adequacy is a significant issue. She pointed to the normalized use of emergency supplemental funding as an indication that the formula is not working for all districts. She and Representative Stewart remarked on the need to raise the unit value.

Representative Miera and Senator Asbill discussed the slippage of public school funding as a percentage of funding for all of state government from a high of 51.6 percent in FY 1987 to a low of 45.5 percent in FY 1997. They noted that education accounts for only 45.6 percent of the FY 2006 general fund appropriations.

***Funding Formula Issues and Problems – Input from Area Superintendents  
Deming Public Schools:***

Harvielee Moore, superintendent, pointed out that NCLB does not recognize the uniqueness of each school district; for example, the 11th grade CRT is only in English, though 40 percent of Deming students are English language learners (ELL). According to a national report that was neutral on NCLB, all 50 states are struggling with ELL. Since Deming is on the border, it has high mobility rates, which works against the district attainment of AYP; mobility exists only in the at-risk factor. Bilingual funding is not adequate to move non-English speakers to English competency. She said the three-tier licensure system must be funded adequately. Ms. Moore explained that charter schools receive additional funding from the small school size adjustment factor in the formula while alternative schools do not; she recommended that be changed. There is nothing wrong with efficiency and wise spending, she said; however the Deming school district is one of the poorest districts in a county with the highest unemployment. The district is faced with a limited tax base, high mobility rates, high ELL and high at-risk factors. In one of the Deming schools there are only four Anglos; Deming high school has four students who are just starting school in the U.S. Facts such as these make the stringent requirements of NCLB and AYP an impossible goal.

#### **Cobre Consolidated Schools:**

Dr. Candelario Jauregui, superintendent, and Frank Ryan, business manager, said that districts affected by ELL and special education cannot make AYP. Dr. Jauregui said the task force should look at at-risk funding. When schools make gains in improving drop-out rates and ELL, they lose funding. Cobre is penalized in elementary arts because its schools are grades one through five instead of one through six. Cobre is faced with declining enrollment, which negatively affects its SEG. Mr. Ryan said that funding for personnel, particularly teachers, is provided based on the prior year, but there are often significant changes by the next school year that affect salary costs. He recommended that salary funding be put back into the formula. He also noted that federal Title 1 funding is not sufficient to pay teacher salaries in the face of declining enrollments; the district has had to pay those salaries out of its regular operating funds.

#### **Magdalena Municipal Schools:**

Mike Chambers, superintendent, said that his district was one of the losers in the categorical vs. noncategorical funding debate. Categorical funding causes unequal funding and creates either winners or losers. The state must look at small rural school districts. There are 326,000 public school students in New Mexico, 85 percent of whom are in the largest districts. Thirty-four school districts, 38 percent of the state's 89 school districts, have only 2.7 percent of the student population. It is impossible for small districts to meet NCLB requirements. Under the "highly qualified" provisions, the state's social studies umbrella licensure does not work anymore; small school districts do not have enough teachers who meet the hour requirements to teach the variety of subjects, including economics, world history and New Mexico history, that state requirements call for. He emphasized that small districts want the same educational opportunities for their students that larger districts provide, including distance learning, AP, art and music. As to career clusters, however, he noted that Magdalena and other small districts do not have the resources to be able to teach 16 career clusters. Rural districts are also the most affected by rising transportation costs, particularly gasoline. Mr. Chambers mentioned that the task force funding had been vetoed, yet the governor gave money to keep the Glenwood school

open for 30 students even though the school board had voted to close the school. Magdalena received early childhood funding, but he worries that the program might not be funded again. Although not recommending the BIA funding model, Mr. Chambers observed that it was ultimately equal because it simply divided the number of students into the amount of revenue to determine funding for each school.

#### **Animas Public Schools:**

Jerry Birdwell, superintendent, said his district has the highest T&E index and that doing away with it would cost the district \$250,000; because of the categorical funding for level two salaries last session, the district is short \$50,000. The school district is in good financial shape although it had to RIF six teachers when its student population dropped from over 600 to 300. Animas has 23 teachers, 14 of whom have master's degrees plus hours; most of them were raised in Animas and want to live there and raise their own families there. His teachers are highly qualified, but career clusters will not work because they all teach more than one class. Mr. Birdwell suggested that the task force look at the minimum resources necessary to teach English or history or other required courses.

#### **Lordsburg Municipal Schools:**

Jim Berentine, superintendent, said the definition of "small district" used by the state and the definition used by NCLB do not correlate. He is concerned about categorical funding because each time it is used it weakens the effect and intent of the funding formula. Although Lordsburg won by a small amount, the district cannot depend on that funding in the future and so he supports noncategorical funding. His district needs more counselors; it has seven to serve over 500 students in five buildings. Art and music funding needs to be less competitive and more stable. Lordsburg has worked hard to improve its T&E, and he hopes the incentive for teachers to return to school remains in any future iteration of T&E. The three-tier license system, its effect on salaries and the statutory requirement to pay minimum salaries means that school districts will have to cut programs if salaries are not funded correctly through the formula. Mr. Berentine agreed with Mr. Chambers that every school district has funding issues. He encouraged the task force to keep size adjustment units, growth and the save harmless.

#### **Aldo Leopold Charter High School:**

Harry Browne, business manager, provided written testimony on the effects of the current formula on charter schools. Enrollment levels in new charter schools tend to fluctuate significantly and it is less likely for students currently enrolled in a high school to leave that school to attend a new charter than it is for students to begin at a charter high school after eighth grade. While the formula pays for new grade levels to be phased in, it penalizes growth in the existing grades because of prior-year funding. Mr. Browne recommends that the formula provide for four-year averaging of MEM.

Tom Sullivan, director of the New Mexico school superintendents association, said that all 89 school districts have difficulty making budgets. Small districts have to depend on emergency supplemental funding; mid-size districts have to cut programs and personnel; and large districts are dipping into their emergency reserves to make budgets. If every district is

having trouble, that argues for a thorough review of the overall funding formula. He concurred with Ms. Tackett that this study will be much more complex than the 1996 study. From previous testimony, Mr. Sullivan listed many issues that need to be addressed in this study, including:

- funding; (1) rural and small districts, particularly the use of emergency supplemental
- (2) bilingual education funding;
- (3) pre-K;
- (4) elementary school and other counselors;
- (5) fine arts;
- (6) alternative and charter schools;
- (7) elementary physical education;
- (8) health education;
- (9) next-step programs;
- qualified teachers; (10) NCLB-driven problems such as AYP, supplemental services and highly
- (11) disequalization caused by categorical funding;
- (12) use of prior-year calculations; and
- (13) growth.

Mr. Sullivan said it behooves the task force to attempt to foresee consequences of changes, so that while some problems are being solved, other problems are not being created as a result.

**Las Cruces Public Schools:**

Mr. Jenkins, chief financial officer, supported Mr. Sullivan's comments. He said there needs to be a size adjustment for alternative schools because, if the legislature is serious about reducing the drop-out rate, alternative schools are the most successful at doing that. He gave several examples of how well alternative schools have served their students in Las Cruces.

**Gadsden Independent Schools:**



Senator Nava, representing the acting superintendent, echoed earlier comments. She said the unit value must be increased because, in her district, reserves are dwindling and the district has a hiring freeze in place. Gadsden cannot compensate teachers enough and so it cannot recruit teachers. She noted that there have been suggestions to make testing categorically funded. However, she said, the state needs to ensure that funding formula factors are adequate. The way mentors are funded, through prior-year MEM, needs to change. She concurred that there needs to be an adjustment factor for alternative schools. The .5 bilingual funding is not adequate and the task force should consider at least .8. Federal and state requirements for special education and the IDEA necessitate rethinking how special education is funded; currently, the formula does not reward the mainstreaming of special education students. There are huge health challenges in Gadsden and there is a great need for nurses. Data collection has become increasingly important for funding and accountability, yet data entry clerks are some of the lowest paid positions; there needs to be investment in staff as well as hardware.

#### **Silver Consolidated Schools:**

Mr. Pool said the discrepancy between the T&E and the three-tiered licensure system must be resolved, but he recommended that the status quo be maintained until the task force can complete its work. The \$51.8 million in categorical funding for salaries last session created 52 losers and 37 winners. Small districts cannot afford to lose formula dollars. For example, the \$84,000 loss by the Jemez Mountain school district is far more significant than a \$1 million loss for a large district such as APS. He reiterated that alternative schools should qualify for the same small school size adjustment as charter schools. In looking at grade level weights, the task force should not forget 6th grade, which now includes the same weight as 4th and 5th grades, he said. It takes as much to educate a 6th grader as it does an 8th grader since most 6th grades are in middle schools, not elementary schools. Mr. Pool noted that consolidation had been good for the Cliff schools, and while not necessarily advocating consolidation, it is something that should be considered by small districts.

On questions from Senator Asbill, Ms. Ball said the reason for the difference in funding for alternative schools and charter schools was the result of the establishment of alternative schools in APS in the 1970s. The legislature was concerned that if alternative schools were given small size school credit, they would proliferate, thus costing more money. Charter schools on the other hand are funded, by law, the same as regular schools and, therefore, are eligible for the small school size adjustments.

Senator Nava pointed out that building new schools places an extra burden on districts and the formula should provide for first year operational costs of new schools. Dr. Cleveland concurred, saying that in the past Rio Rancho has been unable to give raises because it had to pay operating costs of its new school. She noted that prior-year funding may have solved some problems, but it created others. The current formula is not adept at coping with new problems, and the task force should look at ways to ameliorate problems. Ms. Moore echoed Dr. Cleveland's comments, saying that the Deming schools had been caught in the inadequate funding loop for its special education needs. Mr. Manning observed that problems due to prior-year funding are not unique to charter schools; all schools face problems with it.

***Emergency Supplemental and Other Small District Funding Issues – Mr. Bill Green, Quemado Independent Schools***

Mr. Green gave a brief presentation regarding issues that small districts face. Small districts are those with under 200 students. Without an increase in funding, small schools will be forced to close, and when schools close, communities die. A local school is often the primary employer in a small community and its closure has an adverse impact on the local economy. In addition, closing schools increases transportation costs for the district and the time it takes for students to get to and from school. Transportation costs of small districts are not adequately funded through the formula. The minimum salaries of the three-tiered system have less effect on rural districts because they have always had to pay more just to attract teachers. Some small districts had to resort to emergency supplemental funding because cash balances were taken away.

On questions from Representative Stewart, Mr. Green said it takes more money per student to educate children in small districts. Quemado's average class size is 12-17. The Datil teacher teaches 12 students, but she teaches four grade levels and special education. In related questioning, Senator Taylor asked about the correlation between district size and student achievement. Mr. Green answered that academic performance in small districts is generally much better than larger districts. This is due, in part, because small districts do not have the social issues that large districts have to deal with; for example, they have fewer dropouts and less truancy. Also, staff in smaller schools know their students and their families. However, Quemado is a fairly transient district; its population is not as stable as one might assume. The district's student population is 20 percent Native American. Mr. Chambers said that Magdalena has the same problems with a high mobility rate. Alamo has a BIA school, and Indian students may attend either Magdalena or the BIA school. Even if the Anglo and Hispanic students are proficient, the school cannot make AYP because the students from Alamo move in and out of the school.

Mr. Pool asked about emergency supplemental funding. Mr. Green replied that most of the operating cost for small districts is in personnel.

In answer to Representative Miera, Mr. Green said that if a school district closes a school it will not be able to pass school bonds. He added that the funding formula has to change so small districts are not on the block every year. Asked by Mr. Roch what changes should be made, Mr. Green replied that small districts need more money; the size adjustment needs to be larger. The state should decide the minimum cost to provide educational programs and then work from there regarding funding. Mr. Green also said that the resiliency of students in small schools has allowed them to continue to excel in academics despite the long commutes to and from school. Mr. Archuleta said the formula needs to have a district size adjustment. His district is 96 miles wide and transportation costs are high. He cannot get a school bond passed because he closed the Lindreth school; he does not have a librarian or counselors; he is at a bare-bones curriculum. Constitutional Amendment 2 was supposed to supplement regular public school funding, but schools have not seen that money. In response to Representative Hall, Mr.

Green said that regional educational cooperatives will not affect transportation costs. Mr. Archuleta said that Jemez Mountain school district did use the REC and was able to save some money. Mr. Chambers raised the issue of statutorily requiring that a minimum percentage of general fund funding be dedicated to public education. He stated that a minimum level of funding is necessary, and that perhaps the formula could work from that point.

The task force recessed at 3:25 p.m.

### **Tuesday, September 13**

The task force was called to order on September 13, 2005 at 9:15 a.m. by Representative Stewart, chairwoman. All members present the first day were present the second day except Senator Nava, who was absent.

Ms. Maison recapped the issues raised during the community forum the prior evening (minutes of that meeting are attached to the committee minutes). Several members of the task force requested that specific rules and parameters be placed on the forums to help save time and to focus the discussion to formula issues.

### ***Task Force Conversation Regarding Monday's Agenda and Forum***

Ms. Ortiz raised the following concerns based on the prior day's testimony:

- (1) the use of actuals when developing school budgets as a way to eliminate winners and losers and to make budgeting easier for school districts;
- (2) the difference in costs for different sized districts;
- (3) the use of emergency supplemental funding for basic operations;
- (4) the need to develop baseline costs, including operating and capital, for schools;
- (5) the need to accommodate the costs of special needs;
- (6) at-risk funding and the correlation between needs and success;
- (7) growth and open enrollment;
- (8) cash balances; and
- (9) federal and state unfunded mandates.

Ms. Ortiz said the bottom line for school districts is inadequate funding.

Representative Stewart asked the members to consider which items the task force needs to look at in more detail. For example, she proposed presentations on federal and state statutory

requirements for special education and how it is funded. Mr. Roch noted that if the special education factor generated more than a district needs, it could be scaled back the next year; however, one student can quickly deplete a special education budget. Discussion ensued about whether money allotted to districts through the formula for special education was being allocated to those programs. Representative Miera observed that special education includes gifted students; also, there are expenses with students with normal intellectual capacity but who are medically fragile. Mr. Jenkins made the point that mediation and other legal costs of special education can be astronomical.

Ü Representative Stewart requested information on academic performance specific to special education and information on special education lawsuits in New Mexico. Representative Miera said that the federal government requires states to provide special education but does not fund that mandate. Representative Stewart told the task force that Connecticut is currently engaged in legal action against the federal government regarding the unfunded mandates of NCLB. Also, the new authorization of IDEA is starting to roll out and it increases mandates on the states; congress promised to pay 40 percent of the costs of special education but it has appropriated less than half of what was promised. Ms. Ball observed that even if the money were appropriated, the state does not get federal money in a timely manner, and schools are on a reimbursement system for federal money. Dr. Cleveland said there is a \$20,000 limit to what the public school insurance authority will pay in special education cases, and a district is forced to pay the remainder. This is clearly an unrealistic situation, she said, and suggested that not only should the state look at a realistic amount, but it should more clearly define special education services. She said that districts are currently settling court cases to avoid court costs even in instances where the state would clearly win. Her example was a case in which a district settled the case for \$80,000 (attorney fees) in lieu of paying \$300,000 in costs to see the case to the end; because of this, the state is becoming an open target for litigation. Speaking for school superintendents, Mr. Mulcock said they want mandated coverage through PSIA. LESC is studying the cost of mandated coverage.

In answer to questions by Senator Asbill, Representative Miera said the move from current- to prior-year funding in 1999 was in response to a belief that potential dropouts were not being sufficiently monitored after the 40-day count that determined funding. Senator Asbill responded by saying the task force may want to look at prior-year funding and the actual growth during the current year and then fund the growth of the current year. Representative Stewart stated that prior-year funding solved some problems but created others. She used it as an example of why making small legislative fixes within the formula without looking at the big picture is dangerous. She suggested that perhaps the formula should include a combination instead of either/or.

Mr. Pool raised the issue of funding for school nurses and counselors. Currently, counselors are assigned to more than one school, so they spend too much of their time traveling. In addition to other problems, this lack of counselors affects the turnout of students for AYP testing. Mr. Pool suggested that nurses and counselors need to be present in every elementary school. Mr. Chambers said he did not disagree, but if the state does not make the funding pie

any larger, requiring them in each school will not mean anything. He suggested that the state must fund those positions; otherwise money will have to be pulled from other areas of budgets already too tight. Senator Taylor said that APS may have economies of scale, but it still needs more counselors and physical education classes. Dr. Cleveland reported that Rio Rancho has elementary school counselors at each site, but that means one counselor for 900 students.

Representative Stewart commented that during the next legislative session, it might behoove the legislature to increase the unit value for now in an attempt to give districts breathing room before the comprehensive study of the funding formula can be completed. She stressed that the legislature should not try to fix formula issues this session. She noted that the task force will have to decide by November whether to recommend that the level three minimums be funded categorically or noncategorically.

***Funding Outside the Formula, including SB 190 of the 2005 Session – Jonelle Maison and Frances Maestas***

Ms. Maison presented written testimony on Senate Bill 190, this year's Junior, which funded many school projects outside the formula. A bill to fund operational expenses is very different from capital outlay and has unintended consequences, particularly for recurring programs. Junior funded over \$5.6 million in operational programs for specified school districts. LFC scored all projects as recurring. Although the legislature may not have intended special appropriations to affect the funding formula, they do damage to the formula and public policy in several ways: (1) they disqualify funding for school districts; (2) PED may have to take credit for special appropriations; (3) the appropriations are for only one year, but obligations incurred may continue; (4) even if the SEG were increased by \$5.6 million for FY 2007, that money would flow through the formula and may not be sufficient or may not be used for the original purpose; and (5) if the appropriation is inadequate or the district wants to continue the program, it may have to decrease funding from other budget items to pay for it.

Ms. Maestas provided the task force with a table showing a 10-year history of PED's supplemental emergency distributions to school districts and charter schools from actual FY 1996 totals through budgeted FY 2005 totals. Directing task force members' attention to the distributions for the Hondo and Corona districts, she pointed out that both required supplemental emergency appropriations for almost the entire 10-year period in order to meet regular operational costs and, in some cases, mandated salary increases. She also pointed out the increase in the number of districts requesting supplemental emergency distributions, which has doubled since passage of legislation in 2003 that limits the amount that districts may retain as a cash balance.

Turning to the agenda, Ms. Maestas noted other instances in which the legislature had provided funding outside the formula:

< Replacement of federal temporary assistance for needy families (TANF) funding for full-day kindergarten. Ms. Maestas said that, during the five-year implementation of full-day kindergarten, the legislature had relied on TANF funding for approximately \$4.0 million in

federal dollars to fund increased operational expenses. She said that for FY 2006, the legislature appropriated \$4.0 million outside the formula to replace the TANF funds, which will be a part of the base for FY 2007.

< Implementation of the third year of the three-tiered licensure framework. Ms. Maestas said that language in the General Appropriation Act of 2005 requires that the \$51.8 million appropriated to bring all level 2 and 3A teachers up to the statutory \$40,000 minimum makes those dollars "quasi-categorical", and, therefore, outside the formula. The language requires PED to establish the unit value without taking the \$51.8 million appropriation into consideration and to use those dollars to adjust each district's or charter school's program cost by the amount needed to provide the required minimum salary. This appropriation should also become part of the base for FY 2007.

< Enrollment growth. Ms. Maestas said that the legislature sometimes provides funding outside the formula to support enrollment growth in affected districts and that those dollars are usually included in the base in subsequent years.

Noting the depletion of the reserves by FY 2001 in the statutorily created state support reserve fund, Ms. Maestas told the task force that the only recourse districts and charter schools have to get mid-year additional funding is either to request supplemental emergency funds appropriated each year to PED (assuming a sufficient appropriation) or to request a supplemental appropriation from the legislature. She reminded the task force that minimum salary levels for principals enacted in the 2003 reform legislation were scheduled to go into effect for FY 2006, but the implementation date was delayed until FY 2008 because of funding concerns. She also noted the shortfall in funding for minimum salaries for educational assistants.

Dr. Cleveland discussed several issues related to requirements for funding state and federal mandates. In addition, she expressed interest in examining possibilities for funding formula considerations that would allow or even encourage districts to take advantage of on-line opportunities to improve school or district performance and, as well, to provide students access to courses that may not be available in all schools or districts.

***State Investment Council Report to the LESC on Increased Land Grant Permanent Fund Distributions – Frances Maestas***

By way of background, Ms. Maestas explained that the Enabling Act for New Mexico, passed by the U.S. congress in 1910, together with the Ferguson Act of 1898, provided the state with 8.75 million acres of surface land and 13.4 million subsurface acres of mineral deposits to be held in trust to provide funding for public education and other state institutions specifically identified in the acts. As trustee, the commissioner of public lands leases the trust lands for mineral exploration and grazing rights and may also sell or exchange trust properties. Royalties and income from the sales of land are transferred to the land grant permanent fund and are then invested by the state investment council through its administrative arm, the state investment office.

Ms. Maestas provided the task force with a table that shows the 20 beneficiaries of the land grant permanent fund and their respective percentages of ownership of the fund. Public schools are, by far, the largest beneficiary at approximately 83 percent ownership; the remaining 19 beneficiaries include all of the state's four-year higher education institutions and other state institutions such as the school for the blind and visually handicapped, school for the deaf, the penitentiary, the miners' hospital and the state hospital. At the special election in September 2003, New Mexico voters adopted an amendment to the state constitution to permanently increase the annual distribution from land grant permanent fund investments from 4.7 percent to 5.0 percent of the average of the year-end market values of the fund for the immediately preceding five calendar years. The constitutional amendment also provided for a temporary increase in the distributions to 5.8 percent from FY 2005 through FY 2012 and 5.5 percent from FY 2013 through FY 2016. Ms. Maestas pointed out that the change in the constitution also requires that the additional 0.8 percent annual distribution from FY 2005 through FY 2012, as well as the additional 0.5 percent from FY 2013 through FY 2016, be used for education reform as provided by law.

Ms. Maestas reported that in his presentation to LESC in August 2005, Mark Valdes, deputy state investment officer of administration and client services, compared the distributions under the 5.8 percent current year distribution to the 4.7 percent distribution prior to passage of the 2003 increase. She said that Mr. Valdes emphasized that passage of the constitutional amendment has significantly increased distributions from the land grant permanent fund. For example, the total distribution for FY 2005 is \$422.2 million under the 5.8 percent distribution formula; under the 4.7 percent formula, the distribution would have been \$342.1 million, a difference of approximately \$80.1 million. For FY 2006, the 5.8 percent distribution is projected to be approximately \$426.4 million, while under the 4.7 percent formula, the distribution would have been \$345.6 million, or \$80.8 million less. Addressing the soundness of the corpus of the fund, Mr. Valdes said that, as long as the investment performance exceeds the percent annual distribution plus inflation, the corpus of the fund will be preserved.

Based on projections provided by the state investment council, Ms. Maestas said the FY 2006 estimated distribution earmarked for education reform is \$48.8 million. Directing task force members' attention to a table she provided, she noted that the amount of funding directed to education reform would increase through FY 2012, reaching a projected \$67.4 million and would begin to decline in FY 2013, reaching \$0 by FY 2017 when the amount of the distribution will revert to the permanent increase of 5.0 percent. Ms. Maestas said that the issue of whether the amount of funding that must be dedicated to education reform is the 1.1 percent above the original 4.7 percent or the 0.8 percent above the 5.0 percent permanent increase has been the subject of much discussion among analysts in the executive and legislative. LESC and the state investment office contend that the amending language guarantees that all amounts generated over the 5.0 percent permanent increase must be dedicated to funding reform initiatives; however, any or all of the full distribution for public schools could be used to support education reform initiatives based on policy decisions agreed to by the legislature and the governor.

Ms. Maestas directed task force members' attention to a table illustrating the history of

the percentage of general fund recurring appropriations for public education in relation to total recurring general fund appropriations. She pointed out that, until FY 1991, public education, including public school support, funding for PED operations and special projects, had been appropriated more than 50 percent of total general fund appropriations; from FY 1991 to the present time, the percentage of general fund dollars appropriated to public education has fallen to a low of 45.5 percent in FY 1997 and is estimated to be 45.6 percent for FY 2006.

Task force members discussed a number of issues regarding the definition of "educational reforms", as well as the supplanting of the general fund by the increase in the land grand permanent fund distribution. Representative Stewart stated that the implementation of the three-tiered licensure framework has always been considered to be one of the reforms included as part of the reform legislation enacted by the 2003 legislature in House Bill 212. She added that the funding of these salary minimums uses more than the amount generated by the 2003 constitutional amendment, whether one considers the designated amount for reform to be above 4.7 percent or 5.0 percent. In either case, those dollars are fully committed to support the five-year implementation of the three-tiered licensure framework. She opined that discussions about reform definitions and supplanting often confuse the debate. Representative Stewart reiterated the importance of increasing the unit value as much as possible to give districts some breathing room, especially during the time the funding formula study is being conducted.

Ú        Mr. Roch requested a presentation on the 2003 T&E index study.

There being no further business, the task force adjourned at 12:15 p.m.



## ***Community Comment Session***

### ***Evening Session – 7:00-9:00 p.m.***

Mr. Pool opened the meeting by welcoming the audience to the first community meeting of the funding formula study task force. Representative Stewart presented a brief explanation of work of the funding formula study task force, including hearing about issues, problems and successes that local educators, parents and other community members have with public school funding.

Art Martinez discussed the country's move from funding schools through local wealth to funding through formulas that equalize funding. He mentioned *Rodriguez v. Texas*, which was a landmark case that decided that education is a state, rather than federal, responsibility. He wondered what vested interests had brought the task force together and what had prompted the discussion. If, as Mr. Pool had said, New Mexico's formula is one of the best in the nation, Mr. Martinez asked, why are small schools not benefiting as much as larger schools? Representative Stewart answered that the task force is working toward issuing a request for proposals that will ask selected experts to look at issues the task force has identified, including funding disparities. As for vested interests, Representative Stewart said that the task force is composed of educators and people who make decisions about the public policy on education.

Mr. Earl J. Montoya, a community activist and member of the southwestern Hispanic roundtable, spoke to five points he raised. (1) He opined that the public school system has no credibility because of conflicting reports on the success or failure of New Mexico schools. For example, he said, the newspaper will report that New Mexico public schools are doing well, but then it will show up as 47th or 48th on national rankings. (2) The system reacts to problems instead of being proactive; educational leaders do not have the vision to head off problems before they occur. (3) Students, particularly Native American and Hispanic students, are not receiving adequate life skills training; students graduate from high school without knowing simple financial management skills. (4) National education standards are a farce. He predicted a subtle problem: Gulf Coast Katrina victims moving into other states' school districts will not be at the same educational level. (5) The school system is failing Hispanic students because a disproportionate number of Hispanic youth run afoul of the legal system in Grant county.

Linda Shay, a teacher, asked for an explanation of the funding formula. Representative Stewart described public school funding. Initially, funding is calculated on the number of students in each grade level, with the recognition that it is more expensive to educate some grades than others. The formula also recognizes that it is more expensive to educate some types of students than others. A district's program units are multiplied by the teaching and experience index (T&E), which is specific to each district and describes the education and experience of the district's licensed teachers. There are also certain "add-ons" that get calculated, including factors such as growth, at-risk, special education and size adjustment. After the legislature has determined the size of the pie, or the total money appropriated to public schools, the public education department determines the value of each program unit and each district's slice of that pie is derived by mathematical formula. Some schools may generate more program units

because they have more students or because they have needier students. Two questions the task force will grapple with are (1) how to align the T&E with the three-tier licensure system; and (2) is the pie big enough, meaning is the unit value high enough. Representative Miera noted the uniqueness of New Mexico's funding formula in that it does not allow schools to be funded based on local wealth; however, local autonomy is maintained by allowing school boards to determine how the money received from the state is budgeted.

Jerry Birdwell, superintendent of the Animas school district, noting the incompatibility of the T&E and three-tier licensure, asked for a show of hands of how many educators want to eliminate the T&E without some other system to reward continued education and experience. He also pointed out that school districts with declining enrollment face special problems because, while they do not generate enough program units, their fixed costs have not been reduced.

Candice Brenlee, a teacher, discussed the salary compaction problem that has occurred because of the three-tier licensure system. With the demise of step increases, level three teachers are losing ground and there is no incentive. In answer to the question by Dr. Cleveland regarding what teachers need, Ms. Brenlee said the answer is money. There is not enough money, for example, for supplies or field trips. She said she recognized that "money is tight, but it has reached the level of ridiculous". Representative Stewart said that pursuant to law, level three teachers will receive a minimum salary of \$45,000; next year, they will receive \$50,000. Mr. Roch, noting that he also is a classroom teacher and recognizing the compaction problem, cautioned teachers to be patient during the five-year phase-in of minimum salaries. Senator Taylor agreed that the new licensure system has had problems during its phase-in, but that, once completed, it will help the profession advance. Dr. Cleveland asked Mr. Pool where Silver Consolidated stood in the state salary rankings. Mr. Pool replied that his district is about 12th in the state, contrasted with Rio Rancho's rank of 80th. Representative Miera pointed out that certain state requirements, like the three-tier licensure system, do complicate local control and the task force needs to look at program units and whether grade-level funding is the best vehicle for calculating the SEG distribution.

Yvonne Perez, the Ruidoso school district business manager, said it is clear that the funding formula does not provide equal education. She supports alternative schools and believes that they must be funded adequately. She also discussed the lack of sufficient funding to hire full-time nurses, social workers and counselors in each school so they do not have to spend so much time traveling instead of serving children. The emotional and social issues that students have must be addressed before they are ready to learn, she said. She agreed with previous speakers that the three-tier system does not reward experienced teachers. Ms. Perez, who used to work for the Las Cruces district, noted that in the larger school district her children could pick from almost any area of interest for classes; that could not happen in a smaller district. While there are advantages and disadvantages to large and small districts, she does not believe that smaller districts have equal opportunities or equal services with large districts. She said that there should be adequate resources for what the state defines as minimum requirements to ensure an adequate education. Mr. Roch asked her to define what she thought minimum resources

would be. Ms. Perez replied that every school should have a nurse, social workers, counselors, experienced teachers with commensurate compensation, fine arts and physical education.

Priscilla Mathena, teacher, agreed that experience works best in teaching and that children in school today have many more problems than in the past. She said she did not want paper, she wanted laptops and that there must be more money for classrooms.

Patty Reed, Silver Consolidated school board member, concurred that salary compaction is a problem the district needs to work harder to remedy. As for the funding formula, she noted that schools that do well educating their students often get penalized in the formula. For example, Silver Consolidated has worked very hard to ensure that students are able to read by third grade; that success, an indicator of something wonderful happening in the district, is not rewarded. When children do well enough to move from special education to mainstream classes, the district loses money. The formula must balance the need for money from failing schools with those that are doing well by their students.

Mr. Montoya spoke again, this time on the need for multilingual high school graduates who are ready to participate in the global economy. He also discussed the problem of students graduating from high school without being literate. He reported several statistics concerning literacy problems with WNMU students and noted that literacy volunteers are first assigned to athletes, leaving them no time to help other students. He said the basic purpose of education is to develop responsible citizens.

Ms. Shay spoke again on the effects of declining enrollment on funding. She noted that while the district lost students, it did not lose enough to need fewer classrooms or nurses and counselors and other resources. She ended the evening with the statement, "Don't make our jobs impossible."

There being no other speakers, the task force's public forum ended at 8:45 p.m.